

PT 11-01

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**OMEGA MISSIONARY
BAPTIST CHURCH,**

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No: 10-PT-0008 (08-16-872)

Real Estate Exemption

**For 2008 Tax Year
P.I.N. 20-03-318-005, 006,
007 and 008
Cook County Parcels**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Babbington, on behalf of Omega Missionary Baptist Church; Mr. William J. Seitz, Fisk, Kart, Katz & Regan, Ltd., on behalf of Mr. Gerese Tadros; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Number 20-03-318-005, 006, 007 and 008 (hereinafter the “subject property”), qualifies for exemption from 2008 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes, and not used with a view to profit, is exempted from real estate taxation and 35 ILCS 200/15-125 wherein parking

areas, not leased or used for profit, and owned by a religious institution, are exempted from real estate taxation.

The controversy arises as follows: On October 15, 2009, Omega Missionary Baptist Church (hereinafter “Omega”) filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed Omega’s application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied. Dept. Ex. No. 2. After reviewing the Board’s recommendation, the Department issued a determination, dated December 10, 2009, denying the requested exemption on the grounds that the property was not in exempt ownership, the property was not in exempt use and the Applicant was the lessee, rather than the owner, of the subject property. Dept. Ex. No. 1. On December 28, 2009, Omega filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on October 6, 2010, with testimony from John O’Dwyer, a member of the Royal Institute of Chartered Surveyors, licensed to appraise commercial real estate in Illinois, Gerese Tadros, sole beneficiary of a trust which owns the subject property, Reverend Joseph Henry, Senior Pastor of Omega, and Clarence Neal and Charles Dixon, both Trustees of Omega. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position, as established by the determination issued by the Department’s Office of

Local Government Services on December 10, 2009. The Department's position is as follows: "The property is not in exempt ownership. The property is not in exempt use. Applicant is not the owner of the property. Applicant is lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made." Tr. pp. 5-7; Dept. Ex. No. 1.

2. Omega was incorporated under the Illinois "Not For Profit Corporation Act" on August 18, 1950. Omega is in "good standing" with the State of Illinois as of October 4, 2006. Omega is governed by a written "Constitution and Bylaws." Omega is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Omega is exempt from sales tax in the State of Illinois. Tr. pp. 68-69; App. Ex. Nos. 11, 12, 13, 14 and 15.
3. Omega is located at 4621-4643 South State Street in Chicago. Omega is a Protestant Christian Church affiliated with the Baptist religion. The building on the property is 12,500 square feet sitting on a 42,757 square foot site which includes parking spaces. The building includes an office and classrooms and a sanctuary holding 765 seats. Tr. pp. 10-13, 85-86; App. Ex. No. 20.
4. The entire subject property was exempt from property taxes in 2007. Tr. pp. 72-73, 78-79; App. Ex. No. 18.
5. Mr. Tadros and his family have been purchasing real estate in the south side of Chicago since the 1970's. The family buys commercial real estate, retail stores, two flats and three flats. Their acquisitions, approximately 20 to 30 buildings, have been fixed up and resold. In the 1970's through the 1990's, Mr. Tadros' father and uncle owned property and businesses near Omega. Tr. pp. 44-48.

6. There were several high rise homes in the area around Omega, including Robert Taylor Homes and Stateway Gardens. In the late 1990's, the Housing Authorities began demolishing these homes. Omega lost many of its members because it was situated across the street from some of the demolished buildings and residents were relocated outside of the area. Attendance at Omega decreased from approximately 750 members to 350. As residents moved, Omega's collections dropped and it could not afford to pay its mortgage. Tr. pp. 75-77.
7. In 2006, a "Judgment of Foreclosure and Sale," was entered against Omega. On February 21, 2007, Judicial Sales Corporation transferred the subject property to Suburban Bank and Trust under Trust No. 74-3947. Mr. Tadros testified that he is the sole beneficiary of this trust. Tr. pp. 49-52, 65-66; App. Ex. Nos. 5, 10 and 23.
8. Omega leased the property from Mr. Tadros for \$3,500/month for 2008, a total of \$42,000/year. Tr. pp. 13-14, 33; App. Ex. Nos. 4 and 6.
9. Mr. Tadros' Form 1040, Schedule E, for 2008 shows \$42,000 in "Rents Received" from the property. Expenses on the property including auto and travel, cleaning and maintenance, insurance, legal and other professional fees, repairs and supplies totaled \$15,169 resulting in "Income" from the property of \$26,831. No property taxes were paid in 2008 because the property was exempt in 2007 and taxes are paid in arrears. Schedule E for 2009 shows "Rents Received" from the property of \$47,000, insurance and other expenses of \$4,147. Property taxes of \$38,580 were paid in 2009 resulting in "Income" of \$4,273. Tr. pp. 57-59; App. Ex. No. 8.
10. Omega's 2008 weekly church bulletins show use of the subject property on Tuesdays, Wednesdays, Saturdays and Sundays, including "evangelism," male chorus rehearsal,

“A.M. Bible class,” senior choir rehearsal, young people’s choir rehearsal, Sunday services, Sunday school, prayer meetings, “Christian nurturing” and morning service.

App. Ex. No. 21.

CONCLUSIONS OF LAW:

An examination of the record establishes that Omega has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2008. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* There are two provisions in that statute which govern the disposition of the instant proceeding. Section 200/15-40 states that property used exclusively for religious purposes qualifies for exemption “as long as it is not used with a view to profit.” 35 ILCS 200/15-40(a). Section 200/15-125 states that parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by the Code, and owned by a religious institution which meet the qualification for exemption, are exempt. 35 ILCS 200/15-125(a).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Moreover, the burden of proving the right to a property tax exemption is on the party seeking exemption, and courts have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1st Dist. 1991). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). The level of proof contained in the record of this case does not satisfy the standard of clear and convincing evidence that applies, without exception, in property tax cases.

The subject property is located at 4621-4643 South State Street in Chicago. Omega is a Protestant Christian Church affiliated with the Baptist religion. The building on the property is 12,500 square feet sitting on a 42,757 square foot site which includes

parking spaces. The building includes an office and classrooms and a sanctuary holding 765 seats. Tr. pp. 10-13, 85-86; App. Ex. No. 20. Omega's 2008 weekly church bulletins show use of the subject property on Tuesdays, Wednesdays, Saturdays and Sundays. This use includes "evangelism," male chorus rehearsal, A.M. Bible class, senior choir rehearsal, young people's choir rehearsal, Sunday services, Sunday school, prayer meetings, "Christian nurturing" and morning service. App. Ex. No. 21. Omega was incorporated under the Illinois "Not For Profit Corporation Act" on August 18, 1950. Omega is in "good standing" with the State of Illinois as of October 4, 2006. Omega is governed by a written "Constitution and Bylaws." Omega is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and is exempt from sales tax in the State of Illinois. Tr. pp. 68-69; App. Ex. Nos. 11, 12, 13, 14 and 15.

The record in this case forces me to conclude that the subject property is leased with a view to profit, a use which is proscribed by both 35 ILCS 200/15-40 and 35 ILCS 200/15-125. Omega leased the property from Mr. Tadros for \$3,500/month for 2008, for a total of \$42,000/year. Tr. pp. 13-14, 33; App. Ex. Nos. 4 and 6. Mr. Tadros' Form 1040, Schedule E, for 2008 shows \$42,000 in "Rents Received" from the property. Expenses on the property including auto and travel, cleaning and maintenance, insurance, legal and professional fees, repairs and supplies totaled \$15,169, resulting in "Income from rental, real estate or royalty properties" of \$26,831 in 2008. No property taxes were paid in 2008 because the property was exempt in 2007 and taxes are paid in arrears. Schedule E for 2009 shows "Rents Received" from the property of \$47,000 and insurance and other expenses of \$4,147. Property taxes of \$38,580 were paid in 2009 resulting in "Income from rental, real estate or royalty payments" of \$4,273. Tr. pp. 57-

59; App. Ex. No. 8. The lease for the subject property for the two-year term beginning March 1, 2008, through February 28, 2010, raised the rent to \$3,500/month for the first year and \$4,000/month for the second year. App. Ex. No. 7. As Mr. Tadros' Schedule E's clearly indicate, he earned \$26,831 in profit from the property in 2008 and \$4,273 in profit from the property in 2009.

Mr. Tadros' argument as to why the subject property is not leased to Omega "with a view to profit" is that he could rent the property at a higher rent than he currently does. According to Counsel's closing argument, Mr. Tadros is doing a "good deed" because he could be charging two or three times what he is charging Omega. Tr. p. 98. "... [I]f you look at the market, he could be doing a lot better." Tr. p. 99.

According to Mr. O'Dwyer's testimony, the 2008 rental of \$42,000 for the year amounts to \$3.56/square foot. App. Ex. Nos. 4 and 6. Mr. O'Dwyer testified that he looked at the open market rental rate for similar properties using three different approaches. Under the "cost approach," and "sales comparison approach," open market rental was estimated at \$8.40/square foot. Under the "income approach," open market rental was estimated at \$9.00/square foot. In Mr. O'Dwyer's opinion, the rent charged Omega is "way below market." Tr. pp. 14-29; App. Ex. Nos. 3 and 4. Mr. Tadros' contends that he does not use the property with a view to profit because he is, arguably, not maximizing his profit.

However, the concern in 35 ILCS 200/15-40 and 35 ILCS 200/15-125 is whether the property is used with a view to profit, not whether the owner is maximizing his profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that "former decisions of this court" show that the phrase "not leased or otherwise used with a view to

profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” Mr. Tadros is leasing his property for rent. In Turnverein “Lincoln” v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Court noted, with regard to the argument that income from the rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” Mr. Tadros’ property is “let for a return.”

In looking at the ordinary meaning of the words “with a view to profit,” I must note that in 2008, Mr. Tadros earned \$26,831 in profit from the property. In 2009, Mr. Tadros earned \$4,273 from the property. Mr. O’Dwyer testified that the “market” would expect Mr. Tadros to earn a 10% rate of return on his investment, but “based on what he’s doing,” he’s only earning a 3% return. Tr. p. 41. The point is, though, that Mr. Tadros is earning a return. He is renting the property for a profit, with a return of 3%. It is “immaterial” to his argument that he foregoes some profit by renting to Omega and it is “immaterial” what the “market” would expect him to earn on this investment.

Furthermore, I find Mr. O’Dwyer’s testimony that Mr. Tadros is foregoing profit to be speculative and inconclusive. Mr. O’Dwyer acknowledged that there is a “thin market” for rental of this property. “It’s not like an office building where you’ve got 10 or 20 people thinking I would like to locate there.” Tr. p. 31. Analyzing open market rental for churches is problematic because, as Mr. O’Dwyer testified, church properties tend not to be leased and if they are leased, “the leases are kept very close to the chest.” Tr. p. 16. On the other hand, he testified that Latter Day Saints and “a lot of Muslim

organizations” “would be very interested in this location and also in this particular facility.” Tr. pp. 29-30. Mr. O’Dwyer opined that Latter Day Saints could be subsidized from Utah, which might help pay start-up costs. “The Muslims also have major funds that allow for expansion and development of temples for worship, and they also get help from the outside.” Tr. p. 31. However, the reality is that no one from either of these organizations testified that they were currently willing to lease the subject property at \$8 or \$9/square foot. There was no testimony that any religious organization had made an offer to Mr. Tadros to lease the subject property.

While Mr. Tadros argues that he has forgone profit, he has also avoided certain costs of renting the property. Mr. Tadros bought and subsequently rented the subject property with a tenant already in place. Mr. Tadros saved the costs of having the subject property sit empty while he looked for a tenant. Mr. Tadros would be looking for a tenant in a neighborhood that has apparently lost half of its residents. Mr. Tadros saved the costs of paying a broker to find a lessee for him. He saved the costs of offering an inducement to a tenant to lease the property. While the above considerations are musings only, they represent the same type of speculation offered by Mr. O’Dwyer at the evidentiary hearing, and neither establishes facts.

In American National Bank and Trust Company v. Dep’t of Revenue, 242 Ill. App. 3d 716, 724 (2d Dist. 1993), plaintiff leased property to Zion’s Lighthouse, which used the property for religious purposes. The lease was for \$3,200/month, with Zion having the option to purchase the property and the responsibility to pay property taxes. The Court, “in light of the presumption in favor of taxation,” determined that the owner

of the property leased it for profit and consequently determined that the property was taxable.

In reaching its determination, the Court discussed the fact that a portion of the property leased to Zion was used as a parking lot. In American National Bank, the Court noted that “without a doubt, the portions of the plaintiff’s property used as a parking lot are not exempt from taxation.” The Court added that the section of the Property Tax Code which exempts parking areas “contains the explicit requirement that the religious organization actually own the parking lot.” *Id.* at 723. This discussion in American National Bank offers further reasons for denying the exemption of the parking areas located on the subject property.

In the instant case, Omega leases 30 parking spaces “to the north of the building” from Mr. Tadros. “Then there is excess land for additional parking if need be.” Tr. p. 13. Mr. Neal testified that Omega leased the parking lot from Mr. Tadros and the vacant land around the church that is used “for the parking of the members.” Tr. pp. 86-86. Applicant’s Exhibit No. 18, “Assessment History,” labels P.I.N. 20-03-318-005 as “parking lot” and P.I.N. 20-03-318-008 as “parking lot – vacant land.” It is unclear from the record exactly what area is used for parking on the subject property. Regardless of the space used for parking, parking spaces are “without a doubt” not exempt under the Property Tax Code unless the parking space is owned by a religious institution. Although the testimony was that the “vacant land” was exempt prior to the foreclosure and transfer of ownership, there is nothing in the record that would allow me to conclude that the vacant land now merits an exemption, whether the land is used for parking, or is, in fact, “vacant.”

Finally, the facts in the case of Victory Christian Church v. Dep't of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1994) are strikingly similar to the instant case. Victory Church, a religious organization, leased a two story building and three vacant lots used for parking from Colonial Bank and Trust, under trust number 872, whose sole beneficiary was George Apostolou. Victory Church agreed to pay approximately \$8,000/month and property taxes if the request for exemption was denied. All parties agreed that the property was used for exempt purposes. The Department of Revenue argued that it is the property owner's use, not the lessee's use, that is dispositive in determining whether the property is entitled to an exemption. The Department argued that "leasing a property for profit precludes exemption even when the lessee uses the property exclusively for religious purposes" because "its owner is a private entity that collects rent and is profit motivated." *Id.* at 921.

The Court noted that before one looks to the primary use to which the property is used after the leasing, one must look to see if the owner of the property is entitled to exemption from property taxes. "If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." *Id.* at 922.

In Victory Church, the property was owned by a private individual, not exempt from taxes, and the property was leased for profit. In the instant case, the subject property is owned by a private individual, not exempt from taxes, and the property is used with a view to profit. In Victory Church, the Court found that the property was not exempt from property taxes reasoning that "[T]o decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious or a

school organization.” *Id.* at 923. The reasoning applies equally in the instant matter and the Court’s decision strongly supports affirming the denial of the exemption for the subject property.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2008 real estate taxes should be affirmed and Cook County Parcels, identified by P.I.N.S 20-03-318-005, 006, 007 and 008, should not be exempt from property taxes in 2008.

ENTER:

January 14, 2011

Kenneth J. Galvin
Administrative Law Judge